

Internal Revenue Service  
**memorandum**

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DAMustone

date: AUG 23 1988

to: District Counsel, Chicago MW:CHI  
Attn: L.S. DiMauro

from: Director, Tax Litigation Division CC:TL

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subject: Technical Advice - Proposed revision of the Letter 1012(DO)

It has been requested that we provide technical assistance with respect to the above matter. The issue involved has been discussed with Luanne DiMauro of your office.

ISSUE

Whether the Chicago Key District's proposed revision of the Letter 1012(DO) in light of the Tax Court's recent decision in J.G. Kern Enterprises Inc. v. Commissioner, T.C. Memo. 1987-580, is acceptable.

CONCLUSION

The Letter 1012 has already been revised by the National Office in light of J.G. Kern. This revision will soon be disseminated to the field. Accordingly, while the efforts of the Chicago Key District in this regard must be commended, the matter has been taken of, and hence, there is no need to consider the sufficiency of the District's proposed revision.

DISCUSSION

On November 23, 1987, the Tax Court issued a memorandum opinion in J. G. Kern Enterprises, Inc., Docket No. 37779-86R -- T.C. Memo. 1987-580. In that opinion, the court held that the Letter 1012 (which is sent to an applicant when the applicant's request for determination is not processable) in use in 1981 was not sufficient to notify petitioner that its original application for determination was no longer pending. Accordingly, the court found that for purposes of I.R.C. § 401(b), the remedial amendment period extended (in the circumstances presented) back to the date of the original application.

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Shortly after this decision was issued, the EP/EO Operations Division (which is generally responsible for devising and disseminating the various form letters used in the field) initiated a study of the Letter 1012. While the letter involved in J.G. Kern has since been revised, it was nevertheless decided that the current letter required clarification. Operations' proposal was reviewed by this Division and the Employee Plans Technical and Actuarial Division, and the revisions necessitated by the J.G. Kern decision were finally agreed to in January of this year. (A copy of the Letter 1012, as so revised, is attached hereto for your convenience.)

Unfortunately, the new version of the Letter 1012 has not yet been disseminated to the various key district offices due to complications arising with respect to the imposition of user fees. See generally Rev. Proc. 88-8, 1988-4 I.R.B. 22. This delay is, of course, regrettable. However, we have been informed by the Operations Division that the revised letter will be sent to the field during early August.

In sum, while the efforts of the Chicago Key District in this regard should be commended, the Letter 1012 has already been revised to address the concerns raised by J.G. Kern. Therefore, the District's proposed revision need not be considered.\*/

If we can be of any further assistance, please contact David Mustone of this Division at FTS 566-3407.

MARLENE GROSS

By: Sarah A. Hall  
SARAH A. HALL  
Employee Plans Litigation  
Counsel  
Tax Litigation Division

Attachment

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\*/ As noted earlier, the Operations Division has the primary responsibility for all form letters used by the field in the determination letter process. Therefore, in the future, we recommend that the Key District coordinate any proposed revisions it may have with the National Office, rather than with District Counsel.